



DEPARTMENT OF THE NAVY
OFFICE OF THE GENERAL COUNSEL
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

OCT 06 2017

MEMORANDUM FOR THE OFFICE OF THE GENERAL COUNSEL

Subj: MANDATORY REQUIREMENTS FOR DECLINING ALTERNATIVE DISPUTE RESOLUTION DURING THE EQUAL EMPLOYMENT OPPORTUNITY PROCESS

Ref: (a) 5 U.S.C. § 572(b)
(b) DON Discrimination Complaints Management Manual, Chapter 3

1. Purpose. Decisions to decline the use of Alternative Dispute Resolution (ADR) during the Equal Employment Opportunity (EEO) process are made on behalf of the Secretary of the Navy and not the individual manager. Therefore, any decision to decline ADR must be made in writing and only for one of the reasons listed in paragraph 2 below.

2. Acceptable Reasons for Declining ADR. There are six statutory reasons for a management declination of ADR, which are found in reference (a):

a. A definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

b. The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

c. Maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

d. The matter significantly affects persons or organizations who are not parties to the proceeding;

e. A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and,

f. The agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement.

In very rare circumstances, ADR is impracticable. Management shall clearly articulate the reasons ADR is considered impracticable in a memorandum as described in paragraph 3.

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3. All management declinations must be in writing as follows:

a. Authorized officials who decide to decline the use of ADR must send a signed memorandum to the Assistant General Counsel (ADR), either citing one of the statutorily permissible reasons listed above, or providing written justification why ADR is impracticable. A sample memorandum is provided in Attachment 1 of reference (b).

b. A Responsible Management Official (RMO) for alleged discrimination is not the proper individual to decline ADR, and the memorandum must state that the executing official is at a supervisory level above any RMO.

c. The memorandum shall be sent via electronic mail in portable document format (PDF) to: adr@navy.mil.

4. Conclusion. It is important that commands comply with statutory law found in reference (a) and Department of the Navy policy in this regard. If you have questions, please contact Ms. Detria Liles Hutchinson, Acting Assistant General Counsel (ADR), at detria.lileshutchins@navy.mil or (202) 685-6974.



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